

REMARKS/ARGUMENTS

Claims 33-49 and 51 are now active in this application. New claim 51 has been added requiring that the hydrogel particles be stably dispersed and suspended in the aqueous medium of the composition. This amendment is supported by the specification at page 19, lines 16-18. No new matter has been added by this amendment.

Applicants have presented the claims in a product-by-process format, requiring that the product be a product as formed by the dropping method described in the application and in new claim 33. This method provides hydrogel particles which are substantially uniform in their size and shape, as discharging the emulsion or dispersion through an orifice into an oil to form droplets would inherently do. It is important that the present particles be formed as droplets in order to provide the uniformity of appearance and shape inherent in such formation.

Further, the claims now require that the aqueous medium have a viscosity of 300 to 5000mPa•s at 25° C and a specific gravity of 0.7 to 2.0. Applicants have found that this provides significantly improved flowability to the cosmetic composition, and provides refreshing feel, particularly as a lotion. This is further described in the specification at page 19, lines 12-18.

This provides a final skin cosmetic composition that is not only pleasing to the touch, but is also visually aesthetically pleasing, with the particles most preferably suspended (as required in new claim 51) in a transparent medium, such that the particles neither precipitate to the bottom of the container nor float on the surface of the composition.

The claims stand rejected under 35 USC 102 or 35 USC 103 over Delrieu et al, either alone or in combination with Tsaur et al. Neither of these references disclose or suggest the product as now claimed. While Delrieu et al disclose preparation of a composition by injection of an agar composition through a needle into liquid paraffin oil at 5C, with the

resulting beads being incorporated into cosmetic compositions such as creams, gels or lotions. However, there is nothing within Delrieu to suggest that the aqueous medium should have the required viscosity or specific gravity of the present claims, as now amended. Further, there is nothing with Delrieu to suggest having particles stably dispersed and suspended in the medium (so that they neither precipitate nor float on the surface). It is the combination of the hydrogel particles of the present invention and the viscosity and specific gravity of the aqueous medium that permit the present composition to have the particles stably dispersed and suspended in the medium without the particles settling or precipitating and without the particles floating to the surface of the composition. As such, neither the present composition nor its appearance can be suggested by Delrieu.

Additionally, claims 34-36 of the present application relate to the application of vibrations during the discharging step. Claim 35 specifies that the vibrations must be either applied directly to the dispersion or emulsion, directly to the orifice, or directly to the liquid column being discharged from the orifice. The Examiner notes that Delrieu “teaches to control the size of the beads by agitation of the oil bath”. However, this agitation simply means stirring of the oil bath, as one of ordinary skill in the art would recognize as the meaning of the term “agitation” in this particular usage. Further, there is absolutely nothing within Delrieu that would suggest using vibration applied directly to either the orifice, the dispersion or emulsion itself, or the column being discharged from the orifice, in order to control shape and/or uniformity of the particles, thus rendering the particles more uniformly nearly spherical.

Tsaur et al fail to overcome the deficiencies of Delrieu et al. In fact, Tsaur et al would not be combinable with Delrieu to obtain the present invention, since the present invention has the goal of providing nearly spherical particles (a result of the very process described in the claim 33), wherein by Tsaur et al’s very own admission at column 5, lines 4-

8, they are seeking irregularly shaped particles, basically prepared by ripping apart a long noodle of the hydrogel material. Thus, for arguments sake, it is agreed that Delrieu et al have a goal of spherical or near spherical particles, any attempt to then combine the teaching of Tsaur et al with Delrieu et al would either run directly counter to Delrieu et al (by providing irregularly shaped particles in accordance with Tsaur et al) or directly counter to Tsaur et al (by providing more regular nearly spherical particles of Delrieu et al). Further, since it does not appear that Delrieu et al teach preparation of nearly spherical particles, Delrieu et al cannot suggest the present composition as claimed (which inherently will result in such shaped particles). Tsaur et al (as previously noted in earlier responses) provide no disclosure or suggestion on how to obtain anything other than their preferred irregularly shaped particles. Accordingly, combining Delrieu et al and Tsaur et al cannot then result in such nearly spherical particles, since neither reference provides teachings to do so.

Accordingly this combination of references cannot suggest the present composition which contains particles having the substantially uniform shape and size that would be provided by a process as described in the claim, namely the formation of droplets by discharging the precursor emulsion or dispersion through an orifice into a cooling oil, and combining the thus formed particles with an aqueous medium having a viscosity of 300 to 5000mPa•s at 25° C and a specific gravity of 0.7 to 2.0.

Since the references, alone or combined, neither disclose nor suggest the present invention product as claimed, the rejections should be withdrawn.

The claims stand further rejected under 35 U.S.C. 112, second paragraph, as being indefinite. It is not understood how the objected to phrase of “under conditions sufficient to obtain droplets” can be definite when first presented (as witnessed by the lack of any such rejection under 35 USC 112, second paragraph based on this phrase in the previous Office Action dated June 3, 2004), and now be indefinite. The claims are clear and definite, as one

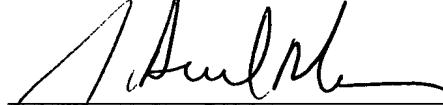
of ordinary skill in the art would understand that a number of variable can be controlled to provide droplets, such as flow rate, vibration frequency, etc. The question that must be answered is would one of ordinary skill be able to readily know whether their process falls within the claims. The answer, of course, is yes. It is easy for one of ordinary skill to tell if a particular product falls under the claims, if their process of forming the product actually forms droplets. Accordingly, there is no indefiniteness in the claims as presented and this rejection should be withdrawn.

The term "analog" as used in claim 45 is also clear and definite, as the meaning is clear from the specification of the present application beginning at page 7, line 22, where the exact phrasing of the claim is used, followed by various examples of the ceramide analogs mentioned. Accordingly, the rejection under 35 USC 112 should be withdrawn.

Applicants submit that the application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

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